

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

SON NGUYEN,

Plaintiff,

v.

CAROLYN RIDLING *et al*,

Defendants.

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CIVIL ACTION NO. 4:11CV151

**ORDER ADOPTING REPORT AND RECOMMENDATION OF UNITED STATES
MAGISTRATE JUDGE**

The case was referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. The Magistrate Judge entered a Report and Recommendation on August 29, 2012. This Report recommended that Defendant Carolyn Ridling's Second Rule 12(b)(6) Motion to Dismiss [Doc. # 31] and Defendants Texoma Medical Center, UHS of Texoma, Inc., W. Mackey Watkins and Jan Johnson's Second Rule 12(b)(6) Motion to Dismiss [Doc. # 32] be granted as to Plaintiff Son Nguyen's state law claims of negligent hiring, supervision, training or retention, and denied as to Plaintiff's claims under 42 U.S.C. § 1983. Defendants W. Mackey Watkins and Jan Johnson filed objections. No other objections were filed.

Having made a *de novo* review of the objections raised to the Report and Recommendation by Defendants Johnson and Watkins, the court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections are without merit. These Defendants object to the Report and Recommendation insofar as it denies their motion to dismiss on Plaintiff's claims

for supervisory liability under Section 1983. Defendants argue that Plaintiff has not alleged sufficient facts to support the idea that they are state actors, or to support such a claim in general.

The Report and Recommendation addressed this argument, Doc. # 51 at 10-11, and no new argument is presented in the objections. A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim is before the court, not a motion for summary judgment. Based on Plaintiff's Complaint and the standard of review on a Rule 12(b)(6) motion, sufficient facts have been alleged at this stage to support a claim for supervisory liability under Section 1983. The court overrules the objections, and adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this court.

IT IS THEREFORE ORDERED that Defendant Carolyn Ridling's Second Rule 12(b)(6) Motion to Dismiss and Defendants Texoma Medical Center, UHS of Texoma, Inc., W. Mackey Watkins and Jan Johnson's Second Rule 12(b)(6) Motion to Dismiss [Docs. # 31, 32] are GRANTED IN PART. Plaintiff Son Nguyen's state law claims of negligent hiring, supervision, training or retention are dismissed. The motions are denied as to Plaintiff's claims under 42 U.S.C. § 1983.

So **ORDERED** and **SIGNED** this **19** day of **September, 2012**.



Ron Clark, United States District Judge